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ORIGINAL

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December 1, 2006

**VIA HAND DELIVERY**

Charles L. A. Terreni, Esquire  
Chief Clerk and Administrator  
South Carolina Public Service Commission  
101 Executive Center Drive  
Columbia, SC 29210

**COPY**  
**Posted:** D. Duke  
**Dept:** SA  
**Date:** 12-1-06  
**Time:** 2:45

RE: Application of Wyboo Plantation Utilities, Inc. for Approval of  
New Schedule of Rates and Charges for Water and Sewer Services  
Docket No.: 2005-13-WS

Dear Mr. Terreni:

Enclosed are the original and five (5) copies of the Return to Motion Seeking Approval to Present the Pre-filed Testimony of Joe Maready filed on behalf of Wyboo Plantation Owners Association, Inc. in the above referenced docket. By copy of this letter, I am serving all parties of record. I have also enclosed an extra copy of this Return to Motion which I would ask you to date stamp and return to me via my courier.

If you have questions or need additional information, please do not hesitate to contact me

Sincerely,

Elliott & Elliott, P.A.

*Charles H. Cook*  
Charles H. Cook

CHC/mlw  
Enclosures

c: All parties of record w/enc.

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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-13-WS

2006 OCT -1 11:01  
PUBLIC SERVICE COMMISSION  
SOUTH CAROLINA

IN THE MATTER OF:

APPLICATION OF WYBOO  
PLANTATION UTILITIES, INC.  
FOR APPROVAL OF NEW  
SCHEDULE OF RATES  
AND CHARGES FOR WATER  
AND SEWER SERVICES

RETURN TO MOTION SEEKING  
APPROVAL TO PRESENT THE  
PRE-FILED TESTIMONY OF  
JOE MAREADY

Wyboo Plantation Utilities, Inc. ("Wyboo" or "Applicant") has moved to present the pre-filed direct testimony of the late Joe Maready at the hearing in this matter. The pre-filed testimony is inadmissible hearsay and its admission into the record would be unduly prejudicial, arbitrary, a denial of due process and would exceed the statutory authority of the Public Service Commission. Accordingly, for the reasons set out herein, the intervenor Wyboo Plantation Owners Association, Inc. ("homeowners") would object to the Applicant's motion.

The Applicant seeks an overall 375% increase in its water and sewer rates. The record would reflect that approximately two-thirds of the Applicant's customers attended the night hearing held in this matter October 30, 2006, at the Clarendon County Courthouse. The application is controversial and hotly contested. The death of Applicant's witness is, of course, regrettable and all of the parties feel sympathy for his family and loved ones. However, the witness' pre-filed testimony is written evidence of a statement made out of court and offered to show the truth of the matter asserted therein.

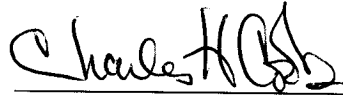
Therefore, its value to the Commission is based upon the credibility of the deceased witness. It is classic inadmissible hearsay *James F. Dreher, A Guide to Evidence Law in South Carolina*, Chapter 8 at pg. 59 (1967).

Hearsay is not admissible except as provided by the South Carolina Rules of Evidence or by other rules prescribed by the Supreme Court of the State of South Carolina or by statute. Rule 802, S.C.R.E. The Applicant cites no statutory or case law authority or evidentiary rule as authority for admitting the decedent's pre-filed testimony into the record. Indeed, careful scrutiny of the South Carolina Rules of Evidence reveals no exception to the hearsay rule cited above to admitting the decedent's pre-filed testimony into the record. The Commission should note that the Rules anticipate certain circumstances in which the witness may be unavailable to testify; however, the Rules of Evidence do not recognize an exception to the hearsay rule that permits written testimony in question and answer form to be admitted to prove the truth of the matter asserted therein.

The inconvenience to the Applicant in having to expend the time and effort to obtain a second witness to vouch for his 375% rate increase is outweighed by the prejudice to the remaining parties and customers in having to contend with the assertions and allegations contained in the pre-filed testimony without the benefit of cross-examination. Due process requires, among other things, an opportunity for the remaining parties to confront and cross-examine adverse witnesses In re Vora, et al, 354 S.C. 590, 582 SE 2d, 413 (2003). The parties to this proceeding have been unable to cross-examine the decedent and will be deprived of this constitutional right if the Applicant's Motion is granted. Sympathy alone does not support the Applicant's Motion.

For the foregoing reasons, the Applicant's Motion to admit the pre-filed testimony of the decedent is prejudicial, arbitrary, a denial of due process, and exceeds the statutory authority of the Public Service Commission. Accordingly, Applicant's Motion should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles H. Cook", written over a horizontal line.

Charles H. Cook, Esquire  
ELLIOTT & ELLIOTT, P.A.  
721 Olive Street  
Columbia, SC 29205  
Telephone: 803-771-0555  
FAX: 803-771-8010  
Attorney for Petitioner, Wyboo Plantation  
Owners Association, Inc.

Columbia, South Carolina  
December 1, 2006

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## CERTIFICATE OF SERVICE

The undersigned employee of Elliott & Elliott, P.A. does hereby certify that she has served below listed parties with a copy of the **Return to Motion Seeking Approval to Present the Pre-filed Testimony of Joe Maready** on behalf of Wyboo Plantation Owners Association, Inc., indicated below by mailing a copy of same to them in the United States mail, by regular mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

RE: Application of Wyboo Plantation Utilities, Inc. for  
Approval of New Schedule of Rates and Charges for Water  
and Sewer Services

Docket No.: 2005-13-WS

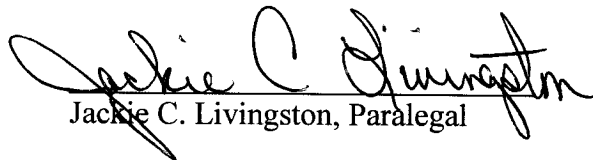
### PARTIES SERVED:

Wendy B. Cartledge, Esquire  
C. Lessie Hammonds, Esquire  
Office of Regulatory Staff  
P. O. Box 11263  
Columbia, SC 29211

John F. Beach, Esquire  
Ellis, Lawhorne & Sims, P.A.  
P. O. Box 2285  
Columbia, SC 29202

Robert E. Tyson, Jr., Esquire  
Sowell Gray Stepp & Laffitte, LLC  
P. O. Box 11449  
Columbia, SC 29211

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CONFIDENTIAL  
2006-12-1 14:11  
10/11/06

  
Jackie C. Livingston, Paralegal

December 1, 2006